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# A BILL FOR AN ACT

RELATING TO INCLUSIONARY ZONING.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION. 1. The legislature finds that the State is  
2 experiencing an affordable housing crisis. The lack of  
3 affordable housing is a major barrier to recruiting and  
4 retaining a skilled workforce, and one of the primary reasons  
5 why Hawaii residents are forced to move to more affordable  
6 communities in the continental United States. This trend has  
7 severely negatively affected local families and communities that  
8 are now separated due to residents being driven out of the State  
9 in search of more affordable housing options. Furthermore, many  
10 newly available housing units are often purchased by wealthy  
11 residents of other states or countries, which can leave many  
12 local residents "priced out" and can overwhelm the local market  
13 with often vacant vacation homes.

14           The legislature further finds that inclusionary zoning is a  
15 county-level practice that requires a typically small percentage  
16 of units in a new housing development to be reserved for  
17 individuals earning incomes within a specified range, but the



1 length of time that the unit is required to be deed-restricted  
2 as "affordable" is typically limited. Inclusionary zoning  
3 requirements by counties, therefore, should not apply to housing  
4 that is offered exclusively for sale or rent in perpetuity to  
5 certain residents of the State.

6 Accordingly, to preserve local communities, the purpose of  
7 this Act is to prohibit any law, ordinance, or rule from  
8 imposing an inclusionary zoning requirement on housing offered  
9 exclusively for sale or rent in perpetuity to buyers or renters  
10 who are residents of the State, are owner- or renter-occupants,  
11 and do not own any other real property.

12 SECTION 2. Section 46-4, Hawaii Revised Statutes, is  
13 amended to read as follows:

14 **"§46-4 County zoning.** (a) This section and any  
15 ordinance, rule, or regulation adopted in accordance with this  
16 section shall apply to lands not contained within the forest  
17 reserve boundaries as established on January 31, 1957, or as  
18 subsequently amended.

19 Zoning in all counties shall be accomplished within the  
20 framework of a long-range, comprehensive general plan prepared  
21 or being prepared to guide the overall future development of the



1 county. Zoning shall be one of the tools available to the  
2 county to put the general plan into effect in an orderly manner.  
3 Zoning in the counties of Hawaii, Maui, and Kauai means the  
4 establishment of districts of [~~such~~] a number, shape, and area,  
5 and the adoption of regulations for each district to carry out  
6 the purposes of this section. In establishing or regulating the  
7 districts, full consideration shall be given to all available  
8 data as to soil classification and physical use capabilities of  
9 the land to allow and encourage the most beneficial use of the  
10 land consonant with good zoning practices. The zoning power  
11 granted herein shall be exercised by ordinance which may relate  
12 to:

- 13 (1) The areas [~~within~~] in which agriculture, forestry,  
14 industry, trade, and business may be conducted;
- 15 (2) The areas in which residential uses may be regulated  
16 or prohibited;
- 17 (3) The areas bordering natural watercourses, channels,  
18 and streams, in which trades or industries, filling or  
19 dumping, erection of structures, and the location of  
20 buildings may be prohibited or restricted;



- 1 (4) The areas in which particular uses may be subjected to
- 2 special restrictions;
- 3 (5) The location of buildings and structures designed for
- 4 specific uses and designation of uses for which
- 5 buildings and structures may not be used or altered;
- 6 (6) The location, height, bulk, number of stories, and
- 7 size of buildings and other structures;
- 8 (7) The location of roads, schools, and recreation areas;
- 9 (8) Building setback lines and future street lines;
- 10 (9) The density and distribution of population;
- 11 (10) The percentage of a lot that may be occupied, size of
- 12 yards, courts, and other open spaces;
- 13 (11) Minimum and maximum lot sizes; and
- 14 (12) Other regulations the boards or [city] council of any
- 15 county find necessary and proper to permit and
- 16 encourage the orderly development of land resources
- 17 within their jurisdictions.

18 The council of any county shall prescribe rules,  
19 regulations, and administrative procedures and provide personnel  
20 it finds necessary to enforce this section and any ordinance  
21 enacted in accordance with this section. The ordinances may be



1 enforced by appropriate fines and penalties, civil or criminal,  
2 or by court order at the suit of the county or the owner or  
3 owners of real estate directly affected by the ordinances.

4 Any civil fine or penalty provided by ordinance under this  
5 section may be imposed by the district court, or by the zoning  
6 agency after an opportunity for a hearing pursuant to chapter  
7 91. The proceeding shall not be a prerequisite for any  
8 injunctive relief ordered by the circuit court.

9 Nothing in this section shall invalidate any zoning  
10 ordinance or regulation adopted by any county or other agency of  
11 government pursuant to the statutes in effect [~~prior to~~] before  
12 July 1, 1957.

13 The powers granted herein shall be liberally construed in  
14 favor of the county exercising them, and in [~~such~~] a manner [~~as~~  
15 ~~to promote~~] that promotes the orderly development of each county  
16 or city and county in accordance with a long-range,  
17 comprehensive general plan to ensure the greatest benefit for  
18 the State as a whole. This section shall not be construed to  
19 limit or repeal any powers of any county to achieve these ends  
20 through zoning and building regulations, except insofar as



1 forest and water reserve zones are concerned and as provided in  
2 subsections (c) and (d).

3         Neither this section nor any ordinance enacted pursuant to  
4 this section shall prohibit the continued lawful use of any  
5 building or premises for any trade, industrial, residential,  
6 agricultural, or other purpose for which the building or  
7 premises is used at the time this section or the ordinance takes  
8 effect; provided that a zoning ordinance may provide for  
9 elimination of nonconforming uses as the uses are discontinued,  
10 or for the amortization or phasing out of nonconforming uses or  
11 signs over a reasonable period of time in commercial,  
12 industrial, resort, and apartment zoned areas only. In no event  
13 shall [~~such~~] the amortization or phasing out of nonconforming  
14 uses apply to any existing building or premises used for  
15 residential (single-family or duplex) or agricultural uses.  
16 Nothing in this section shall affect or impair the powers and  
17 duties of the director of transportation as set forth in chapter  
18 262.

19         (b) Any final order of a zoning agency established under  
20 this section may be appealed to the circuit court of the circuit



1 in which the land in question is found. The appeal shall be in  
2 accordance with the Hawaii rules of civil procedure.

3 (c) Each county may adopt reasonable standards to allow  
4 the construction of two single-family dwelling units on any lot  
5 where a residential dwelling unit is permitted.

6 (d) Neither this section nor any other law, county  
7 ordinance, or rule shall prohibit group living in facilities  
8 with eight or fewer residents for purposes or functions that are  
9 licensed, certified, registered, or monitored by the State;  
10 provided that a resident manager or a resident supervisor and  
11 the resident manager's or resident supervisor's family shall not  
12 be included in this resident count. These group living  
13 facilities shall meet all applicable county requirements not  
14 inconsistent with the intent of this subsection, including but  
15 not limited to building height, setback, maximum lot coverage,  
16 parking, and floor area requirements.

17 (e) Neither this section nor any other law, county  
18 ordinance, or rule shall prohibit the use of land for employee  
19 housing and community buildings in plantation community  
20 subdivisions as defined in section 205-4.5(a)(12); in addition,  
21 no zoning ordinance shall provide for the elimination,



1 amortization, or phasing out of plantation community  
2 subdivisions as a nonconforming use.

3 (f) Neither this section nor any other law, county  
4 ordinance, or rule shall prohibit the use of land for medical  
5 cannabis production centers or medical cannabis dispensaries  
6 established and licensed pursuant to chapter 329D; provided that  
7 the land is otherwise zoned for agriculture, manufacturing, or  
8 retail purposes.

9 (g) Neither this section nor any other law, county  
10 ordinance, or rule shall impose an inclusionary zoning  
11 requirement on housing offered exclusively for sale or rent in  
12 perpetuity to buyers or renters who:

- 13 (1) Are residents of the State;
- 14 (2) Are owner-occupants or renters; and
- 15 (3) Do not own any other real property.

16 (h) As used in this section, "inclusionary zoning  
17 requirement" means any requirement to set aside a fraction of a  
18 housing development to be sold or rented at below market  
19 prices."





1           SECTION 3. This Act does not affect rights and duties that  
2 matured, penalties that were incurred, and proceedings that were  
3 begun before its effective date.

4           SECTION 4. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6           SECTION 5. This Act shall take effect on April 14, 2112.



**Report Title:**

Housing; Development; Counties; Inclusionary Zoning; Exemption

**Description:**

Prohibits any law, ordinance, or rule from imposing an inclusionary zoning requirement on housing offered exclusively for sale or rent in perpetuity to buyers or renters who are residents of the State, are owner-occupants or renters, and do not own any other real property. Takes effect 4/14/2112. (SD2)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

